



September 17, 2019

Jeffrey C. Riley, Commissioner
Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148

Re: Banning the Use of Face Surveillance in Public Schools

Dear Commissioner Riley:

The undersigned organizations are dedicated to promoting civil rights and civil liberties, equitable educational practices, child welfare, and youth development. We write to express grave concerns about the use of face surveillance in schools, and to ask that the Department of Elementary and Secondary Education ban the use of face surveillance systems in all public schools in Massachusetts.

In June, the New York State Education Department barred¹ the Lockport City School District in New York from installing face surveillance technology in schools. Massachusetts should follow New York's example, and ensure face surveillance technologies are not used in any school district in the Commonwealth.

Face surveillance technology allows for the automated identification, tracking, and cataloguing of people based on the unique physical characteristics of their faces. The software works by creating a unique "faceprint" of an individual based on an image of their face. A faceprint can be derived from a photograph or an image captured by a video camera or similar surveillance device. The software can then use a face surveillance algorithm to

¹ Thomas J. Prohaska, Education Department bars Lockport schools from testing facial recognition, June 28, 2019, available at <https://buffalonews.com/2019/06/28/education-department-bars-lockport-schools-from-testing-facial-recognition/>

compare the faceprint against an unlimited number of photographs stored in a database, in an attempt to match, identify, and learn more information about the person. Face surveillance and other remote biometric tracking technologies facilitate government monitoring of every person's every movement, association, and habit—not just on one day, but on all days—with merely the push of a button.

The use of face surveillance by both corporations and government entities is currently unregulated in Massachusetts. There are no statutes dictating how or when it may be used, or providing protections for civil rights and civil liberties. The use of this technology, therefore, is occurring largely in the dark, absent public debate or democratic oversight. In New York the Lockport City School District planned to adopt face surveillance tools in schools without legislative authorization or public debate. When the public learned about the district's plans, people were outraged, and the state's education department stepped in. Massachusetts has an opportunity to foreclose such local action by issuing guidance prohibiting the use of face surveillance technology before problems from its unregulated use can arise.

If national trends are any indication, elementary, secondary, and vocational-technical schools in Massachusetts may soon start considering the installation of face surveillance systems here in our Commonwealth. Private companies are eager to provide these services to public institutions—in fact, they are already targeting police departments.² Emails obtained by the ACLU of Massachusetts indicate surveillance companies are aware that public schools are also a huge market for their products.³

For several reasons, **children should not be subject to face surveillance in schools:**

- Safety in school is critical—but it depends on support, not surveillance. The use of this technology will not make schools safer or prevent incidents that endanger children's lives. Constant surveillance and classification of our children while they are growing up and developing their personalities is not the answer. This technology ratchets up anxiety at a time when students need resources to keep them calm, safe, and feeling accepted.⁴
- This technology is biased and inaccurate, which raises concerns about its use to police students of color. Academic, peer-reviewed studies show face surveillance algorithms are too often racially biased, particularly against Black women, with

² In July 2018, the ACLU of Massachusetts filed requests with dozens of police departments to learn about how they use face surveillance technology. The Plymouth Police Department provided hundreds of emails in response to that request. The emails contain extensive correspondence between a billionaire-backed face surveillance start-up called "Suspect Technologies" and representatives for the Plymouth Police Department. See <https://data.aclum.org/public-records/plymouth-police-department-face-surveillance-emails/>.

³ Ibid. In one email, the CEO of Suspect Technologies links to information about Wisconsin allocating \$30 million for school safety and says, "Guys, seems at least Wisconsin schools maybe [sic] a good initial market." The draft plans for the face surveillance rollout in Plymouth called for installing the tech "in the lobbies of Plymouth police, as well as around its town, including its associated school buildings."

⁴ Anna Minton, CCTV increases people's sense of anxiety, *The Guardian*, October 2012, available at <https://www.theguardian.com/society/2012/oct/30/cctv-increases-peoples-sense-anxiety>

inaccuracy rates up to 35 percent for that demographic.⁵ Today, Black and brown students are more likely to be punished for perceived misbehavior.⁶ Face surveillance will only perpetuate and reproduce this situation, calcifying discrimination and racial profiling within schools, and growing the opportunity gap.

- Face surveillance is not meant for children, so the technology makes more mistakes when scanning young people's faces. These systems are modeled on and optimized for use on adult faces; their use on children is particularly dangerous because as children grow, their faces change shape. Research⁷ that tested five "top performing commercial-off-the-shelf" face recognition systems shows that these systems "perform poorer on children than on adults."
- Face surveillance technology regularly misgenders transgender people,⁸ and will have a harmful impact on transgender young people in our schools. Research shows that automatic gender recognition, a subfield of face surveillance technology, "consistently operationalises gender in a trans-exclusive way, and consequently carries disproportionate risk for trans people subject to it."⁹ At a time when transgender children are being stripped of their rights at a national level,¹⁰ Massachusetts must protect transgender kids in our schools.
- Face surveillance in schools will contribute to the "school-to-prison pipeline,"¹¹ threatening children's welfare, educational opportunities, and life trajectories. Already, children from marginalized communities are too often funneled out of public schools and into the juvenile and criminal justice systems. Face surveillance will inevitably grease this pipeline: False positives will result in unnecessary interactions with law enforcement, lost class time, disciplinary action, and potentially even a criminal record.

⁵ Joy Buolamwini et al, "Gender Shades," MIT Media Lab.

<https://www.media.mit.edu/projects/gender-shades/overview/> and Lauren Rhue, "Emotion-reading tech fails the racial bias test," Phys.org. <https://phys.org/news/2019-01-emotion-reading-tech-racial-bias.html>.

⁶ Teacher treatment of students factors into racial gap in school suspensions, Brown University, July 28, 2019, available at <https://www.brown.edu/news/2019-07-18/discipline>.

⁷ Nisha Srinivas, Karl Ricanek, et.al, Face Recognition Algorithm Bias: Performance Differences on Images of Children and Adults, The IEEE Conference on Computer Vision and Pattern Recognition (CVPR) Workshops, 2019, available at http://openaccess.thecvf.com/content_CVPRW_2019/papers/BEFA/Srinivas_Face_Recognition_Algorithm_Bias_Performance_Differences_on_Images_of_Children_CVPRW_2019_paper.pdf

⁸ Facial Recognition Software Regularly Misgenders Trans People, Matthew Gault, Feb. 19, 2019, https://www.vice.com/en_us/article/7xnwed/facial-recognition-software-regularly-misgenders-trans-people

⁹ Os Keyes, The Misgendering Machines: Trans/HCI Implications of Automatic Gender Recognition, University of Washington, USA, available at https://ironholds.org/resources/papers/agr_paper.pdf

¹⁰ Rebecca Klein, Trump Admin To Transgender Kids: We Won't Deal With Your Civil Rights Complaints, The Huffington Post, January 2018, available at https://www.huffpost.com/entry/transgender-office-for-civil-rights_n_5a5688ade4b08a1f624b2144?gccounter=1

¹¹ School-to-prison pipeline, ACLU, available at <https://www.aclu.org/issues/racial-justice/race-and-inequality-education/school-prison-pipeline>

- Face surveillance technology will harm immigrant families. In this political climate, immigrants are already fearful of engagement with public institutions, and face surveillance systems would further chill student and parent participation in immigrant communities. Massachusetts schools must be welcoming and safe spaces for all families. But in the absence of a statewide rule barring school systems from adopting face surveillance technology, we worry the harms will be borne predominately by these students and families, who are already struggling in often unequal, unfair systems.
- Massachusetts schools should be safe environments for students to learn, explore their identities and intellects, and play. Face surveillance technology threatens that environment. Face surveillance in schools transforms all students into perpetual suspects, where each and every one of their movements can be automatically monitored and catalogued. The use of this monitoring technology in public schools will negatively impact students' ability to explore new ideas, express their creativity, and engage in student dissent.

In Massachusetts, we must take action to ensure children are not subject to this unfair, potentially biased, and chilling scrutiny. The educational community cannot tolerate such an intrusion. In order to protect young people, we must stop face surveillance in schools before it begins.

The Department of Elementary and Secondary Education should ban the use of face surveillance in the schools under its authority.

Legislators and policymakers at the federal, state, and local levels, all throughout the country, are acknowledging that the current situation with respect to face surveillance cannot continue. For example, in July, a group of national lawmakers, including Massachusetts Representative Ayanna Pressley, proposed a bill banning facial recognition technology from public housing.¹² Here in Massachusetts, bills that would place a moratorium on the use of face surveillance by the government were introduced both in the House¹³ and in the Senate¹⁴ on Beacon Hill. Three cities—Somerville, Massachusetts,¹⁵

¹² Emily Birnbaum, House lawmakers to introduce bill banning facial recognition tech in public housing, The Hill, July, 2019, <https://thehill.com/policy/technology/454404-house-lawmakers-to-introduce-bill-banning-facial-recognition-tech-in-public>

¹³ H.1538, available at <https://malegislature.gov/Bills/191/H1538>

¹⁴ S.1385, available at <https://malegislature.gov/Bills/191/S1385>

¹⁵ Sarah Wu, Somerville City Council passes facial recognition ban, The Boston Globe, June 2019, available at <https://www.bostonglobe.com/metro/2019/06/27/somerville-city-council-passes-facial-recognition-ban/SfaqQ7mG3DGulXonBHSCYK/story.html>

Oakland, California,¹⁶ and San Francisco, California¹⁷—recently enacted municipal bans on the use of face surveillance by the local government.

Taking action to stop unregulated face surveillance is popular with Massachusetts voters. A first-of-its-kind poll conducted by Beacon Research found that 76 percent of Massachusetts voters do not think the government should be able to monitor and track people with this technology. Ninety-one percent of Massachusetts voters think the Commonwealth needs to regulate the government’s ongoing use of face surveillance technology.¹⁸

As adults, it is our responsibility to ensure we do not normalize constant surveillance for young people. The Commonwealth has the opportunity to demonstrate a real commitment to the well-being of our children in this digital age by banning face surveillance technology in Massachusetts schools.

We look forward to working with your office to protect young people and school staff, and we thank you for your service to the young people of the Commonwealth.

Sincerely,

ACLU of Massachusetts

American Federation of Teachers, MA

Boston Student Advisory Council/Youth
on Board

Boston Teachers Union

Campaign for a Commercial Free
Childhood

Center for Law and Education

Citizens for Juvenile Justice (CFJJ)

Charles Hamilton Houston Institute,
Harvard University

¹⁶ Sarah Ravani, *Oakland bans use of facial recognition technology, citing bias concerns*, San Francisco Chronicle, July 2019, available at

<https://www.sfchronicle.com/bayarea/article/Oakland-bans-use-of-facial-recognition-14101253.php>

¹⁷ K. Conger, R. Fausset, and S. Kovaleski, *San Francisco Bans Facial Recognition Technology*, The New York Times, May 2019, available

<https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html>

¹⁸ See *Massachusetts Voters Strongly Support Pausing Use Of Unregulated Face Recognition Technology*, ACLU of Massachusetts, June 18, 2019, available at

<https://www.aclum.org/en/news/massachusetts-voters-strongly-support-pausing-use-unregulated-face-recognition-technology>

Education Law Task Force

Greater Boston Legal Services (GBLS)

Jewish Alliance for Law and Social Action
(JALSA)

Jobs with Justice, MA

League of Women Voters, MA

Massachusetts Education Justice Alliance

Massachusetts Advocates for Children

Massachusetts Communities Action
Network (MCAN)

Massachusetts Gay and Lesbian Political
Caucus

Massachusetts Transgender Political
Coalition (MPTC)

Mental Health Legal Advisors Committee

Massachusetts Law Reform Institute
(MLRI)

Massachusetts Teachers Association
(MTA)

NAACP, New England Area Conference

National Association of Social Workers -
Massachusetts Chapter

Phenom

Welcome Project

Cc: DESE Board Members